

JUN 10 2004

ORIGINAL

Federal Communications Commission
Office of the Secretary

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20024

In the Matter of)

)
Amendment of Section 73.202(b))
Table of Allotments, FM Broadcast Stations)
(Madison, Missouri))

MB Docket No. 04-117
RM-10928

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Federal Communication Commission
Bureau / Office

To: Chief, Audio Division
Media Bureau

COMMENTS

Best Broadcasting, Inc. (herein "Best"), by its attorneys, submits these Comments in opposition to the Commission's proposal to reserve FM Channel 247C3 at Madison, Missouri for noncommercial educational ("NCE") use.

I. Channel 247C3 Is Not Subject to the Relaxed NCE Reservation Standards

By a Report and Order adopted on November 21, 2001, the Commission assigned Channel 247C3 to Madison, Missouri, as the community's first local service.^{1/} The allotment, which became effective on January 14, 2002, was first proposed in a counterproposal filed by Best and First Broadcasting Company, L.P., as to which public notice was given on December 7, 2000.^{2/}

In its Second Report and Order in MM Docket No. 95-31, the Commission discussed its new NCE channel reservation standards and stated unequivocally that:

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List A B C D E

^{1/} Report and Order, MM Docket No. 00-129 (Madison, Missouri), 16 FCC Rcd 21182 (2001).

^{2/} Id. ¶ 1. A copy of the Madison counterproposal public notice is attached as Exhibit 1. Comments in response to the proposed Madison allotment were due on December 22, 2001.

We will not, however, allow interested parties to use the relaxed reservation standards for any FM channel for which we initiated an allocation rulemaking after August 7, 2000.^{3/}

The Commission explained that imposing a cut-off date of August 7, 2000 would avoid the “additional delay” caused by allowing NCE station proponents “yet another opportunity to attempt to reserve these channels using the criteria that have already been available to them.”^{4/}

As of December 7, 2000, the date on which the Commission initiated the allocation proceeding that led to the allotment of unreserved Channel 247C3 to Madison, the relaxed NCE reservation standards had been in effect for four months. Therefore, American Family Association, the petitioner for reservation of Channel 247C3 for NCE use, had ample opportunity to submit its reservation proposal in response to the aforementioned counterproposal public notice with full knowledge of the relaxed technical criteria for such proposals. It failed to do so. Accordingly, consistent with the clear and certain cut-off date and underlying rationale established in the NCE Second Report and Order, the Commission should dismiss or deny the proposal to reserve Channel 247C3 for NCE use.

II. It Would Be Inequitable to Deny Best the Opportunity to Pursue Channel 247C3

In its petition requesting the allotment of Channel 247C3 to Madison, Best stated its intention to file an application to construct a new FM station on Channel 247C3.^{5/} Best’s stated intention, however, has been put on hold for well over two years through no fault of its own. In accordance with Commission policy, the opening of a filing window for Channel 247C3 was made subject to the Commission’s auction process for FM broadcast channels. And, the fact that major FM auctions have not been held during the last several years requires no citation support.

^{3/} Reexamination of the Comparative Standards for Noncommercial Educational Applicants (“NCE Second Report and Order”), 18 FCC Rcd 6691, 6706 (2003) (emphasis added).

^{4/} Id.

^{5/} 16 FCC Rcd 21182, at 2116.

Thus, having been responsible for the allotment of Channel 247C3 to Madison, Best has been unable to fulfill its application commitment due to circumstances totally beyond its control. Had the Commission opened-up Channel 247C3 for applications in a timely manner, the allotment would not now be vacant and subject to a petition for possible reservation as an FM allotment restricted for NCE use.

III. The Proposal for Channel 247C3 Fails to Meet the NCE Reservation Standards

Assuming, arguendo, the Commission does not dismiss or deny the Channel 247C3 reservation proposal for lack of timeliness, it should do so for failure to meet the relaxed reservation standards. A petitioner for reservation of an FM allotment for NCE use must demonstrate that it is technically precluded from using a reserved channel and the proposal would provide a first and/or second NCE service to at least 10 percent of the population within the proposed station's 1 mV/m contour.^{6/} As shown in the attached Engineering Statement prepared by Khanna & Guill, Inc.,^{7/} Best's engineering consulting firm, Channel 206C3 in the reserved band is available to serve Madison and the surrounding area. Moreover, a station operating on Channel 206C3 would not cause any prohibited overlap or cognizable TV Channel 6 interference. Further, a Channel 206C3 station would provide a first NCE FM service to 13,993 people and a second such service to 10,530 people, representing 83 percent of the population within the station's predicted 1.0 mV/m contour. Finally, as discussed in Exhibit 2, a Channel 206C3 allotment to Madison carries with it the prospect for future expanded coverage once a local television station makes the required conversion to digital-only operation.

In conclusion, for the reasons shown above, Best respectfully submits that the Commission should dismiss or deny the untimely-filed proposal for reservation of Channel


^{6/} NCE Second Report and Order at 6704-6705.

^{7/} See Exhibit 2.

206C3 for NCE use. In the alternative, the proposal should be dismissed or denied in light of the availability of an alternative reserved channel for allotment to Madison.

Respectfully submitted,

Best Broadcasting, Inc.

By 
John R. Wilner
Bryan Cave LLP
700 Thirteenth Street, N.W.
Washington, DC 20005
(202) 508-6000
Its Counsel

June 7, 2004



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News media information 202 / 418-
0500
Fax-On-on-Demand 202 / 418-2830
Internet: <http://www.fcc.gov>
[ftp.fcc.gov](ftp://ftp.fcc.gov)

REPORT NO. 2455

December 7, 2000

CONSUMER INFORMATION BUREAU
REFERENCE INFORMATION CENTER
PETITIONS FOR RULEMAKING FILED

RM NO.	RULES SEC.	PETITIONER	DATE REC'D	NATURE OF PETITION
RM-10017	73.202(b)	Best Broadcasting Inc. et. al (Filed by: John R. Wilner Attorney Bryan Cave LLP 700 13 th Street, NW Suite 700 Washington, DC 20005-3960)	09/05/00	Request Amendment of the FM Table of Allotments to Substitute Ch. 247C1 for Ch. 247C3 at Moberly, Missouri, Station KCSX, and realloct Ch. 247C1 to Lee's Summit, Missouri, at coordinates 39-04- 20 & 94-35-45; substitute Ch. 233C for Ch. 247C, Station WIBW at Topeka, Kansas, at coordinates 39-00-19 & 96-02- 58; substitute Ch. 248C1 for Ch. 233C1, Station KJCK at Junction City, Kansas, at coordinates 39-00-53 & 96-52- 15; substitute Ch. 237C3 for Ch. 232C3, Station KINZ, at

EXHIBIT 1

Humboldt, Kansas, at coordinates 47-43-21 & 95-33-41; substitute Ch. 249A for Ch. 237A, Station KSNP at Burlington, Kansas, at coordinates 38-10-08 & 95-39-07; substitute Ch. 276C3 for Ch. 234C3, Station KNCY at Auburn, Nebraska, at coordinates 40-27-57 & 95-45-38; substitute Ch. 238C3 for Ch. 276C3, Station KNDY at Maryville, Kansas, at coordinates 39-56-06 & 96-47-33; substitute Ch. 280C3 for Ch. 248C3, Station KRLI, at Malta Bend, Missouri, at coordinates 39-21-59 & 93-24-12; substitute Ch. 253A for Ch. 280C3, Station KCHI at Chillicothe, Missouri, at coordinates 39-43-40 & 93-35-43; substitute Ch. 249C2 for Ch. 246C3, Station KPOW at LaMonte, Missouri, at coordinates 38-48-23 & 93-09-08; substitute Ch. 246A for Ch. 249A, Station KAYQ at Warsaw, Missouri, at coordinates 38-20-41 & 93-23-10; substitute Ch. 248A for Ch. 249A, Station KNMO at Nevada Missouri, at coordinates 37-52-06 & 94-20-01; allot Ch. 247C3 to Madison, Missouri, at coordinates 39-24-37 & 92-10-58; and change the coordinates for Ch. 246C3,

Station KNIM, Maryville,
Missouri, from 40-19-03 & 94-
52-14 to 40-21-06 & 94-52-
17.

*THE ABOVE PETITION FOR RULE MAKING WILL BE TREATED AS A COUNTERPROPOSAL IN MM DOCKET NO. 00-129. REPLY COMMENTS TO THIS COUNTERPROPOSAL SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE.

-FCC-

EXHIBIT 2

ENGINEERING STATEMENT
ON BEHALF OF BEST BROADCASTING, INC.
RE: MB DOCKET NO. 04-117, RM-10928
MADISON, MISSOURI
JUNE 2004

This engineering statement has been prepared on behalf of Best Broadcasting, Inc. ("Best"), the petitioner for allotment of commercial FM Channel 247C3 to Madison, Missouri (MB Docket No. 04-117, RM-10928) and is in response to Petition for Rulemaking to Amend the Table of Allotments to reserve Channel 247C3 for non-commercial educational (NCE) use.

American Family Association ("AFA") filed a Petition for Rulemaking on November 19, 2003 requesting that Channel 247C3 be reserved for NCE use (RM-10928). In its petition, AFA has provided a technical showing which claims that currently no FM channel in the reserved band (Channels 201-220) is available for a new NCE FM station at Madison, Missouri.

A review of the FM allocation situation near Madison, Missouri indicates the feasibility of using Channel 206C3 (89.1 MHz) to serve the community and its surrounding area as an NCE station. For illustrative purposes, Best has selected an antenna site for Channel 206C3 at the following geographic coordinates:

North Latitude: 39° 42' 00"

West Longitude: 92° 10' 08"

The attached map (Figure 1) shows the assumed antenna site in relation to Madison, Missouri. The attached Table I provides a list of pertinent existing and proposed NCE stations and a Channel 6 TV station with respect to the proposed Channel 206C3 operation. In order to provide protection to the existing and proposed FM stations and a Channel 6 TV station listed in Table I the proposed Channel 206C3 station would have to utilize a directional FM antenna. The use of a directional antenna is not

uncommon for FM stations operating in the NCE reserve band. The attached Table II provides the directional characteristics of the proposed FM antenna.

Figure 1 also shows the computed 1.0 mV/m contour for the proposed Channel 206C3 operation with 25 kW maximum effective power (ERP) and 100 meters antenna height (HAAT) based on the directional antenna. These are the maximum facilities permitted by the Commission for Class C3 FM stations. Figure 1 shows the computed 1.0 mV/m contour would serve all of Madison, Missouri and include a population of 28,657 (2000 census) and 4,008 square km area.

Figure 2 indicates the proposed Channel 206C3 operation at Madison would not cause any prohibited contour overlap with any other existing NCE FM stations. Figure 3 shows the predicted interference caused to Channel 6 TV station KMOS-TV, Sedalia, Missouri would not exceed 3000 peoples, permissible under Section 73.525 of the Commission's rules.

The attached Figure 4 shows the computed 1.0 mV/m contours of other existing NCE FM stations in relation to the proposed Madison 1.0 mV/m contour for operation on Channel 206C3. The proposed Channel 206C3 would provide a first NCE FM service to 13,993 people and a second NCE FM service to 10,530 people. Therefore, the proposed Channel 206C3 would be serving more than 83% of the population within its predicted 1.0 mV/m contour which currently has no or one NCE FM service.

It should be noted that Channel 6 TV station KMOS, Sedalia, Missouri has been allotted Channel 15 for its digital television (DTV) operation. Therefore, station KMOS-TV should in the near future be turning its analog operation off and broadcasting its TV signal on Channel 15. Once KMOS-TV starts its operation on Channel 15, the proposed

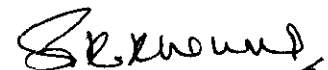
NCE operation on Channel 206C3 can radiate the maximum power of 25 kW towards south and thus increase population within its predicted 1.0 mV/m contour. Removal of Channel 6 restriction would also provide more flexibility in selecting an antenna location for Channel 206C3. In granting UHF TV channel “taboo” restriction, the Commission has recently stated that analog TV operation is considered temporary. Therefore, Best believes the proposed Channel 206C3 operation is not only feasible at Madison currently with a directional antenna, it also provides an opportunity in the future for a maximum Class C3 operation with a non-directional antenna which would result in coverage to more population.

Based on the above analysis, Best believes its proposal for Channel 206C3 for NCE use at Madison is in the public interest since it would result in two FM services (including a commercial FM operation on Channel 247C3) in the Madison area.

It should be also noted that AFA has omitted NCE FM station KOPN, Channel 208C2, Columbia, Missouri from Exhibit One of its petition which shows other existing NCE FM services near the Madison area. The inclusion of KOPN results in a smaller population for the claimed underserved areas.

Under penalty of perjury the undersigned states that the foregoing statement has been prepared by him and that the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts, he believes them to be true.

2 June 2004



S. K. Khanna
Professional Engineer
District of Columbia, PE License No.805

TABLE I

MADISON 206DA

REFERENCE		CH# 206C3 - 89.1 MHz, Pwr= 25 kW, HAAT=100.0 M, COR= 340 M							DISPLAY DATES	
39 42 00 N		Average Protected F(50-50)= 39.08 km							DATA 03-11-04	
92 10 08 W		Ave. F(50-10) 40 dBu= 113.6 54 dBu= 60.2 80 dBu= 12.9 100 dBu= 4.1							SEARCH 05-12-04	
CH CITY	CALL	TYPE STATE	AZI. <--	DIST FILE #	LAT. LNG.	Pwr(kW) HAAT(M)	COR(M) INT(km)	PRO(km) LICENSEE	*IN* (Overlap in km)	*OUT*
207B Pittsfield	WIPA	LIC DCN IL	88.3 268.3	127.20 BLED19921221KB	39 43 25 90 41 09	50.000 104	316 61.4	45.5 University Of Il At Spring	16.50	20.33
206C3 Ottumwa	950213	APP CN IA	353.1 173.1	141.07 BPED19950213MB	40 57 40 92 22 11	13.500 136	368 93.6	39.0 Iowa St Un Of Science & Te	3.38	8.38
206C2 St. Charles	KCLC	LIC DC MO	124.8 304.8	176.21 BLED20000720AAH	38 47 05 90 30 05	33.014 79	214 115.2	37.4 Lindenwood College	19.17	23.60
206A Fairfield	950515	APP CN IA	6.3 186.3	144.57 BPED19950515ML	40 59 38 91 58 48	1.000 46	274 94.4	12.5 American Family Associatio	67.49	37.72
205C2 Chillicothe	KRNW	LIC CN MO	276.4 96.4	122.48 BLED19931006KB	39 48 48 93 35 26	38.000 151	382 58.5	49.9 Northwest Missouri State U	10.49	14.15
203B Quincy	WGCAFM	LIC CN IL	66.9 246.9	78.02 BLED19870930KA	39 58 18 91 19 42	40.000 166	325 4.4	52.2 Great Commission Broadcast	30.43	21.39
205C2 Jefferson City	KJLU	LIC CN MO	182.0 2.0	137.96 BLED19951215KB	38 27 29 92 13 32	29.500 188	386 50.8	51.6 Lincoln University Of Miss	28.96	35.64
204A Kirksville	KTRM	LIC CN MO	326.9 146.9	63.53 BLED19980217KE	40 10 40 92 34 40	1.000 48	329 3.5	12.8 Truman State University	27.31	47.27
209A Kirksville	KKTR	LIC C MO	326.9 146.9	63.53 BLED20020807AAH	40 10 40 92 34 40	1.000 48	329 3.5	12.8 Truman State University	27.31	47.27
208C2 Columbia	KOPN	LIC CN MO	181.8 1.8	77.97 BLED19930203KA	38 59 53 92 11 48	36.000 53	325 3.3	32.0 New Wave Corporation	41.78	42.75
260C3 Macon	KIRK	LIC CN MO	252.4 72.4	36.43 BLH19980625KA	39 36 02 92 34 24	12.500 118	371 38.8	36.2 Kirk, L.L.C.	14.0R	22.4M
209C3 Bowling Green	981020	APP CN MO	116.1 296.1	89.33 BPED19981020MC	39 20 37 91 14 15	9.000 80	314 4.3	27.9 New Life Evangelistic Cent	45.80	57.20
208B1 Warsaw	WIUW	LIC DCN IL	42.0 222.0	97.02 BLED19950420KA	40 20 44 91 24 11	7.620 161	311 4.3	37.3 Western Illinois Universit	52.47	55.42
206C Springfield	KWFC	LIC DCY MO	193.9 13.9	285.43 BLED19980501KA	37 12 06 92 56 33	53.290 342	782 95.6	69.1 Baptist Bible College, Inc	91.20	120.79
205C2 Wapello	KLDI	CP EN IA	28.5 208.5	175.49 BNPED19991215AAE	41 05 00 91 10 10	32.500 60	302 60.6	33.2 Educational Media Foundati	81.19	81.76
207C1 Kansas City	KCURFM	LIC CN MO	251.7 71.7	210.57 BMLD19920728KC	39 04 59 94 28 49	100.000 229	512 54.0	66.5 Curators Of University Of	77.80	90.07
206B Normal	WGLT	LIC DCN IL	70.9 250.9	279.45 BLED19920716KD	40 28 46 89 03 12	7.910 137	348 116.5	34.8 Illinois State University	141.03	128.09
06Z2E Sedalia	KMOSTV	LI HY MO	207.0 27.0	133.58 BLET20010926ACE	38 37 36 92 52 03	100.000 597	864 333.7	128.0 Board Of Governors Of Cent	To Grd B=	5.63

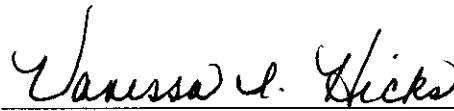
TABLE II
HORIZONTAL DIRECTIONAL RADIATION PATTERN
FOR THE PROPOSED CHANNEL 206C3 OPERATION AT
MADISON, MISSOURI
JUNE 2004

<u>AZIMUTH</u>	<u>RELATIVE FIELD</u>
0.0	0.600
10.0	0.600
20.0	0.755
30.0	0.951
40.0	1.000
50.0	1.000
60.0	1.000
70.0	1.000
80.0	1.000
90.0	1.000
100.0	1.000
110.0	1.000
120.0	1.000
130.0	1.000
140.0	0.796
150.0	0.632
160.0	0.632
170.0	0.632
180.0	0.632
190.0	0.632
200.0	0.632
210.0	0.632
220.0	0.632
230.0	0.632
240.0	0.632
250.0	0.775
260.0	0.894
270.0	1.000
280.0	1.000
290.0	1.000
300.0	1.000
310.0	1.000
320.0	0.951
330.0	0.755
340.0	0.600
350.0	0.600
37.0	1.000
129.0	1.000

CERTIFICATE OF SERVICE

I, Vanessa I. Hicks, a secretary in the law firm of Bryan Cave LLP, do hereby
certify that a copy of the foregoing "Comments" was mailed, postage prepaid, via U.S. mail, this
7th day of June 2004 to:

Patrick J. Vaughn
General Counsel
American Family Association
107 Parkgate Drive
P.O. Drawer 2440
Tupelo, MS 38803

A handwritten signature in cursive script, reading "Vanessa I. Hicks", written over a horizontal line.

Vanessa I. Hicks

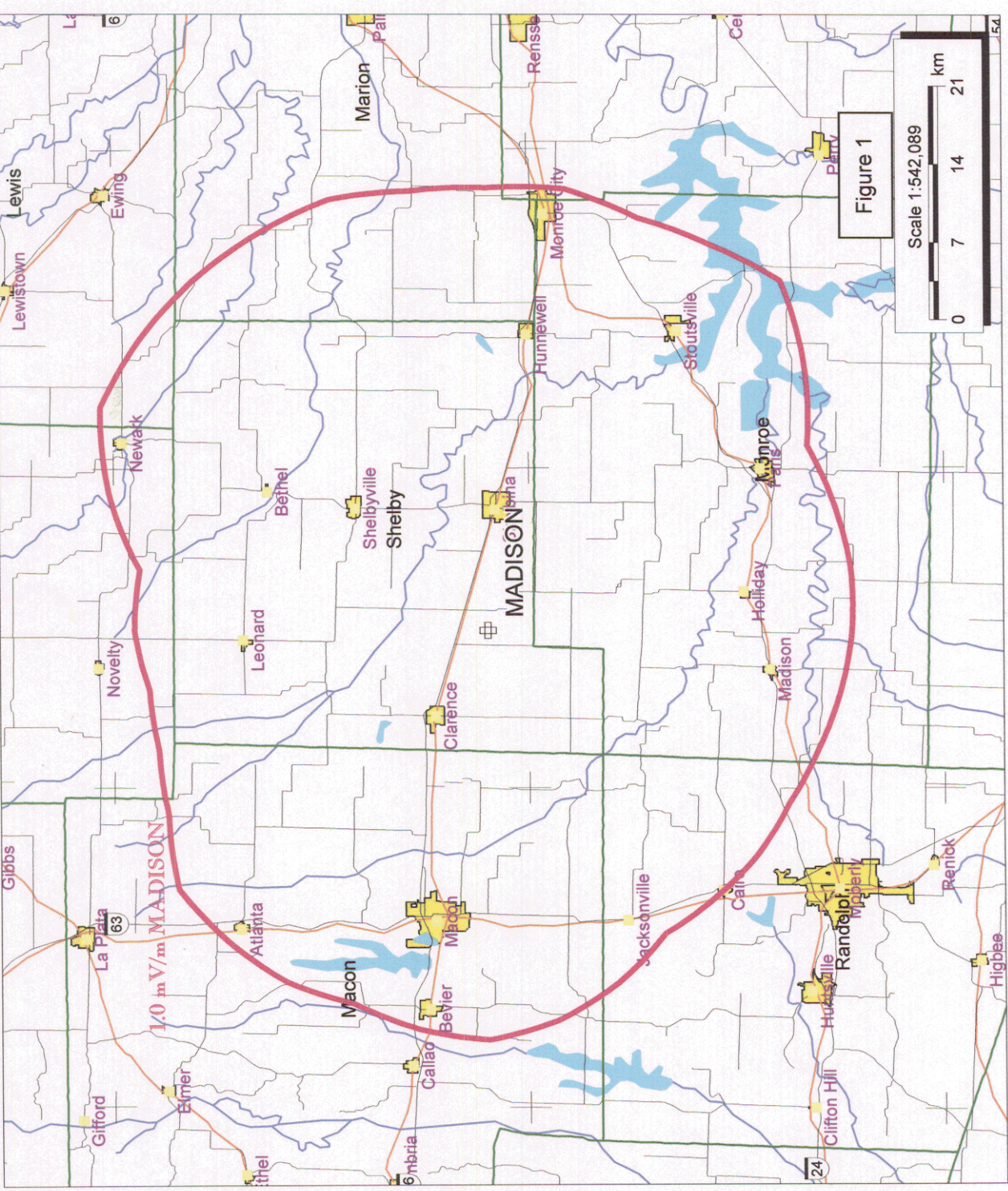
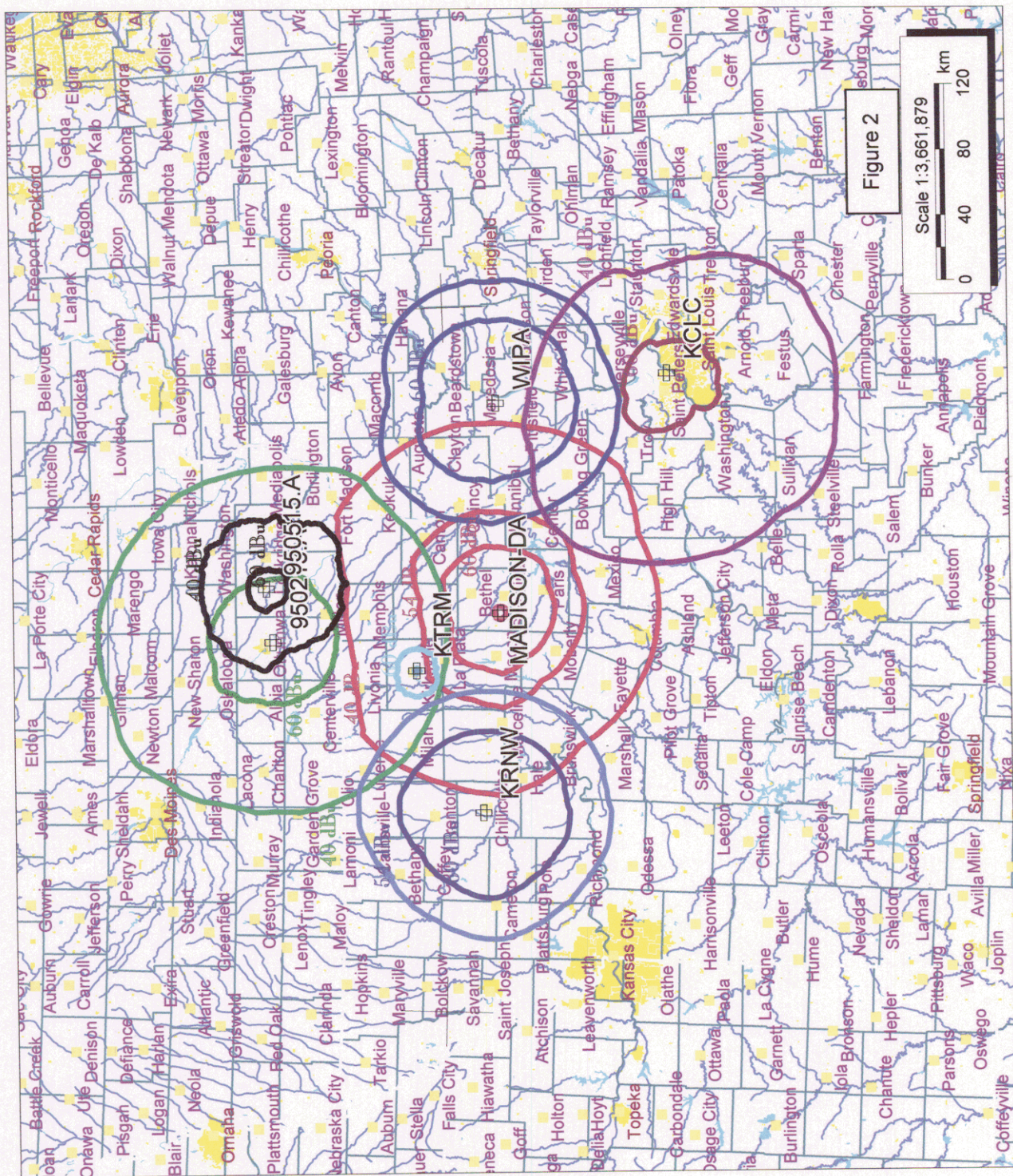


Figure 1

MADISON
 Latitude: 39-42-00 N
 Longitude: 092-10-08 W
 ERP: 25.00 kW
 EIRP: 41.00 kW
 Channel: 206
 Frequency: 89.1 MHz
 AMSL Height: 336.0 m
 Elevation: 243.95 m
 Horiz. Pattern: Directional
 Vert. Pattern: No
 Prop Model: None

MADISON-DA

Latitude: 39-43-00 N
Longitude: 092-10-08 W
ERP: 25.00 kW
EIRP: 41.00 kW
Channel: 206
Frequency: 89.1 MHz
AMSL Height: 337.56 m
Elevation: 240.57 m
Horiz. Pattern: Directional
Vert. Pattern: No
Prop Model: None

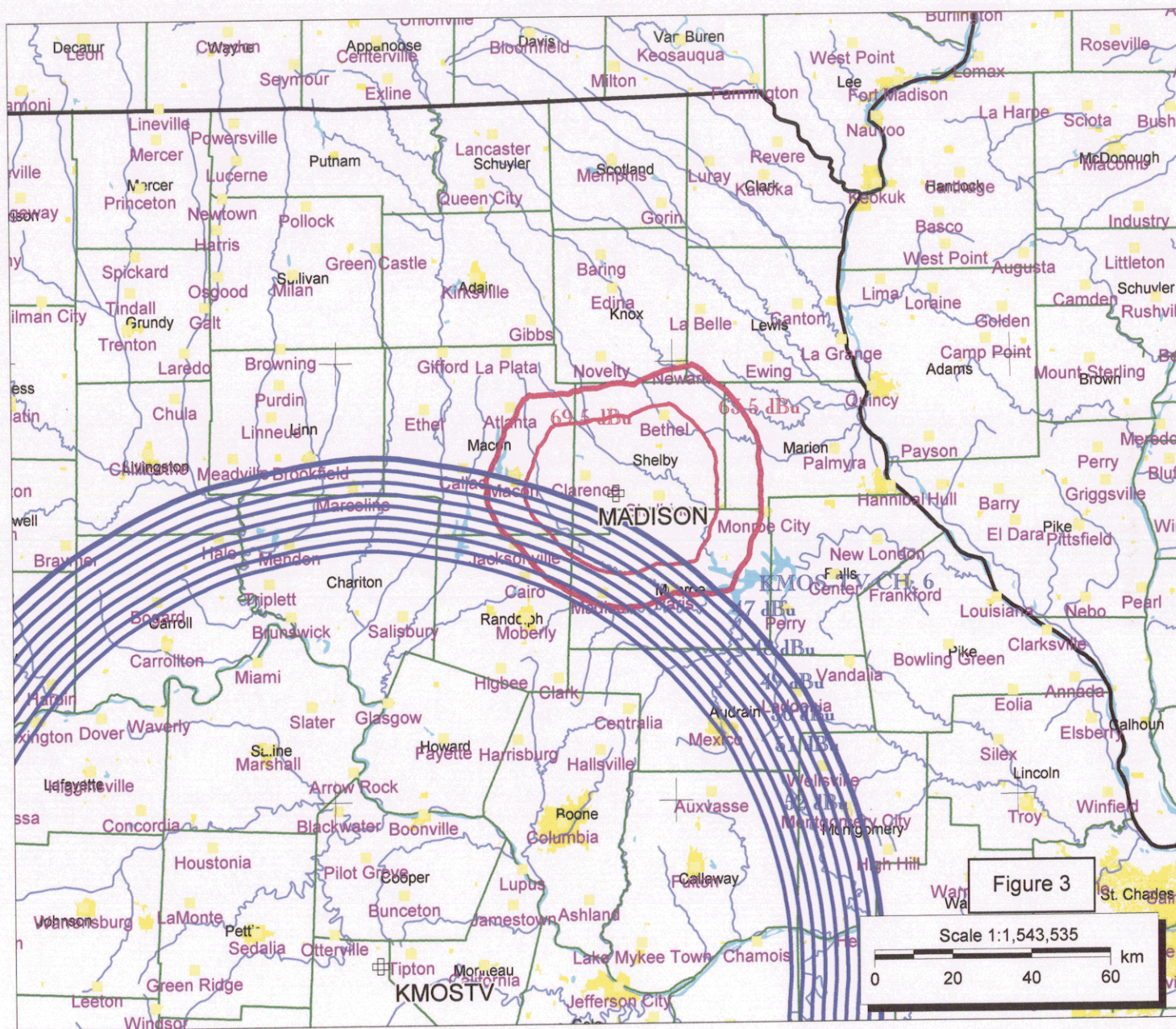


MADISON

Latitude: 39-42-00 N
Longitude: 092-10-08 W
ERP: 25.00 kW
EIRP: 41.00 kW
Channel: 206
Frequency: 89.1 MHz
AMSL Height: 335.92 m
Elevation: 239.88 m
Horiz. Pattern: Directional
Vert. Pattern: No
Prop Model: None

KMOSTV

BLET20010926ACE
Latitude: 38-37-36 N
Longitude: 092-52-03 W
ERP: 100.00 kW
EIRP: 164.00 kW
Channel: 06Z
Frequency: 85.0 MHz
AMSL Height: 864.0 m
Elevation: 243.0 m
Horiz. Pattern: Omni
Vert. Pattern: Yes
Elec Tilt: 1.0
Prop Model: None



MADISON

Latitude: 39-42-00 N
Longitude: 092-10-08 W
ERP: 25.00 kW
EIRP: 41.00 kW
Channel: 206
Frequency: 89.1 MHz
AMSL Height: 336.004 m
Elevation: 243.95 m
Horiz. Pattern: Directional
Vert. Pattern: No
Prop Model: None

